

(O-2001-10)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3,
DIVISION 28, OF THE SAN DIEGO MUNICIPAL CODE BY
REPEALING SECTION 33.2801; AMENDING AND
RENUMBERING SECTION 33.2802 TO 33.2801; REPEALING
SECTION 33.2803; AMENDING AND RENUMBERING
SECTIONS 33.2804 AND 33.2805 TO 33.2802 AND 33.2803;
ADDING NEW SECTIONS 33.2804 AND 33.2805; REPEALING
SECTIONS 33.2806, 33.2807, 33.2808 AND 33.2809; ADDING
NEW SECTIONS 33.2806 AND 33.2807; AMENDING AND
RENUMBERING SECTION 33.2810 TO 33.2808; ADDING
NEW SECTIONS 33.2809, 33.2810 AND 33.2811; REPEALING
SECTIONS 33.2814, 33.2815, 33.2816, 33.2817 AND 33.2818;
AMENDING AND RENUMBERING SECTION 33.2819 TO
33.2812; ADDING NEW SECTIONS 33.2813 AND 33.2814;
AND REPEALING SECTIONS 33.2820, 33.2821 AND 33.2822;
ALL RELATING TO OUTCALL NUDE ENTERTAINMENT.

WHEREAS, the proposed amendments are intended to make the Municipal Code easier
to read; to avoid duplicating definitions in each division; to rely on Chapter III, Article 3,
Divisions 1 through 5 for rules which apply to all businesses governed by Chapter III, Article 3

of the Municipal Code, rather than repeating the rule in each division; to avoid duplicating or conflicting with other regulations governing these businesses; and to rely on Division 1 and Chapter I, Article 1, as appropriate, including the severability clause contained in Section 11.0205; and

WHEREAS, the Council of The City of San Diego takes legislative notice of the contents of the San Diego Vice and Licensing Task Force Report (June 1996) and its accompanying oral and documentary evidence as presented before the Public Safety and Neighborhood Services Committee and the Council;

WHEREAS, this Division is intended to regulate those businesses and occupations previously regulated under Division 28 as escort businesses and escorts who appear nude as part of their services, or emphasize specified anatomical areas; and

WHEREAS, it is not the intent of this Division to regulate any escort-type business which provides services not involving nudity or specified anatomical areas; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.2801.

Section 2. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.2802 to 33.2801, to read as follows:

SEC. 33.2801 Purpose and Intent

It is the purpose and intent of this Division to provide for the orderly regulation of *outcall nude entertainment* and *outcall nude entertainers* in The City of San Diego by establishing certain minimum standards for the conduct of

this type of business to protect the public order and the general welfare of the residents of The City of San Diego.

Section 3. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.2803.

Section 4. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Sections 33.2804 and 33.2805 to 33.2802 and 33.2803, to read as follows:

SEC. 33.2802 Definitions

For purposes of this Division:

"*Adult entertainment establishment*" includes any business that is characterized by an emphasis on depicting, describing or showing *specified sexual activities*, or *specified anatomical areas*. It includes any *establishment* regulated in Section 141.0601 of this Code.

"*Nude*" means being devoid of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any *person*, or any portion of the female breast at or below the areola.

"*Nude entertainment*" means any live performance or activity where a *nude person* provides services, including, but not limited to, talking, reading, listening, singing, posing, walking, *dancing*, or wrestling.

"*Outcall nude entertainment business*" means any person who, for a fee, commission, hire, reward or profit, furnishes or offers to furnish an *outcall nude entertainer*, as defined in this section, for any individual or group at a location other than a fixed business *establishment* licensed to provide *nude entertainment*.

It includes businesses that provide *outcall nude entertainers* such as lingerie models and strippers.

"*Outcall nude entertainer*" includes strippers for bachelor and bachelorette parties, lingerie models, and other similar entertainers. It includes any *person* who entertains while *nude* or whose performance is distinguished or characterized by an emphasis upon the display of *specified anatomical areas* or *specified sexual activities*.

"*Specified anatomical areas*" means and includes less than completely and opaquely covered human genitals, pubic region, buttocks, anus, female breasts below a point immediately above the top of the areolae, or human male genitals in a discernible turgid state, even if completely and opaquely covered.

"*Specified sexual activities*" means and includes the fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; masturbation, actual or simulated; or excretory functions as part of or in connection with any of the activities set forth above.

SEC. 33.2803 Permit Required for Outcall Nude Entertainers, Outcall Nude Entertainment Business

(a) It is unlawful for any *person* to operate or allow the operation of an *outcall nude entertainment business* without a *police permit* for every such business.

(b) It is unlawful for any *person* to act as an *outcall nude entertainer* without a *police permit*.

(c) The *outcall nude entertainment business* must provide its *outcall nude entertainers* a copy of the *outcall nude entertainment business police permit* to be carried by the *outcall nude entertainer* when the *outcall nude entertainer* is working.

(d) In addition to their own *police permit*, every *outcall nude entertainer* must carry a copy of the *outcall nude entertainment business permit* with them when working as an *outcall nude entertainer*.

Section 5. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.2804 and 33.2805, to read as follows:

SEC. 33.2804 Outcall Nude Entertainer Permit, Outcall Nude Entertainment Business Permit Application Contents

(a) To obtain an *outcall nude entertainer permit* or *outcall nude entertainment business permit*, each applicant shall furnish the following information to the *Chief of Police*:

(1) The full true name and any other names ever used by the applicant.

(2) The current residential address and telephone number of the applicant.

(3) Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address.

(4) Written proof that the applicant is at least eighteen years of age.

(5) Applicant's height, weight, color of eyes and hair.

(6) Photographs as specified by the *Chief of Police*.

(7) Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.

(8) Whether the applicant has ever had any *adult entertainment establishment license or permit*, or any *adult entertainment establishment employee license or permit*, or any similar *license or permit* from any agency or board, or any city, county, state or federal agency, suspended or revoked within five years immediately preceding the date of application, and the reason for the suspension or revocation.

(9) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic, and the dates and places of the *convictions*.

(10) Fingerprints.

(b) In addition to furnishing the information required by Section 33.2804(a), an applicant for an *outcall nude entertainment permit* must furnish the following information:

(1) The proposed address and true name or names of the *outcall nude entertainment business*, including any fictitious name(s) the business will operate or advertise under.

(2) The name and address of the owner and lessor of the real property upon which or in which the business is to be conducted, and a copy of

the lease or rental agreement and amendments to it.

(3) The full true name and any other names used by the owners and any *persons* who exercise control over the operation, management, direction or

policy of the business, or who are responsible for the daily operation of the business.

(4) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of the corporation.

(5) If the applicant is a partnership, the name and residence addresses of each of the partners, including limited partners.

(6) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk.

(7) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Section 33.2804(b)(3).

(c) In addition to furnishing the information required by Section 33.2804(a), an applicant for an *outcall nude entertainer permit* must furnish the name and address of the *establishment* or *outcall nude entertainment business* at which the applicant expects to be employed.

SEC. 33.2805 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of an *outcall nude entertainment business* is deemed an applicant for an *outcall nude entertainment permit* and each must provide the information required in Section 33.2804.

Section 6. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be

and the same is hereby amended by repealing Sections 33.2806, 33.2807, 33.2808 and 33.2809.

Section 7. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.2806 and 33.2807, to read as follows:

SEC. 33.2806 Designation of Responsible Managing Officer, Signature on Applications

An applicant who is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

SEC. 33.2807 Grounds for Denial of Outcall Nude Entertainer Permit or Outcall Nude Entertainment Business Permit

In addition to the grounds for denial stated in Section 33.0305, an application for an *outcall nude entertainer permit* or an *outcall nude entertainment business permit* shall be denied for any of the following reasons:

(a) The applicant has within five years immediately preceding the date of the filing of the application, been convicted of any of the following offenses:

(1) Any offense described in California Penal Code sections 266h, 266i, 315, 316, 318, 653.22, or 647(a) or (b); or

(2) Any offense described in California Penal Code Part One, Title 9, Chapters 7.5 and 7.6.

(b) The applicant has within five years immediately preceding the date of the filing of the application *been convicted* of a charge of violating any lesser included or lesser related offense, including California Penal Code section 415, in

satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this Section.

(c) The applicant has *been convicted* of any offense which requires registration as a sex offender under California Penal Code section 290.

Section 8. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.2810 to 33.2808, to read as follows:

SEC. 33.2808 Outcall Nude Entertainment Business - Operating Requirements

(a) Every *responsible person* in charge of an *outcall nude entertainment business* shall maintain a daily register, approved as to form by the *Chief of Police*, containing the following information:

(1) the identification of all *outcall nude entertainers* employed by the *outcall nude entertainment business* and a duplicate of each *outcall nude entertainer's permit*;

(2) the hours of employment of each *outcall nude entertainer* for each day;

(3) the true identity of each patron as it appears on bona fide documentary evidence of identity issued by a governmental agency, the identification number on the documentary evidence, each patron's residence, hours of employment of *outcall nude entertainment business*, name of the *outcall nude entertainer* providing *outcall nude entertainment* services, location and place where *outcall nude entertainment* services took place, and the

fee charged;

(4) Subsection (a) is regulatory only.

(b) Every *responsible person* shall ensure that the daily register is available for inspection at all times during the *establishment's* business hours, by the *Chief of Police*, and is kept on file for one year on the *premises*. This subsection is regulatory only.

(c) No *responsible person* shall permit or allow any *outcall nude entertainer* who is *nude* to be within six feet of any patron. This subsection is regulatory only.

(d) During any performance, no *responsible person* shall allow any *outcall nude entertainer* to intentionally touch any patron, or allow any patron to intentionally touch any *outcall nude entertainer*, whether *nude* or not. This subsection is regulatory only.

(e) It is unlawful for any *responsible person* to operate or allow *outcall nude entertainment businesses* between the hours of 2:00 a.m. and 6:00 a.m.; or for any *outcall nude entertainer* to provide services between the hours of 2:00 a.m. and 6:00 a.m. Permit holders shall not be granted an after-hours permit pursuant to Division 8.

Section 9. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.2809, 33.2810 and 33.2811 to read as follows:

SEC. 33.2809 Outcall Nude Entertainment Businesses to Employ Only

Persons with Valid Outcall Nude Entertainer Permit

(a) It is unlawful for any *responsible* person in charge of an *outcall nude entertainment business* to employ, or permit, any person to act as an *outcall nude entertainer* who is not in possession of a valid, unrevoked *outcall nude entertainer permit* or perform any services for which a *police permit* is required.

(b) *Outcall nude entertainers* must notify their employer when their *outcall nude entertainer permit* is suspended, revoked, or expired.

SEC. 33.2810 Reporting of Telephone Numbers

It is unlawful for any *responsible person* to fail to report all telephone numbers or listings used by the *outcall nude entertainment business* to the *Chief of Police* within ten calendar days of the number becoming operative or inoperative.

SEC. 33.2811 Outcall Nude Entertainer or Outcall Nude Entertainment Business Advertising Requirements

Each *outcall nude entertainer* or *outcall nude entertainment business* shall include the number of its applicable *police permit* in any advertisement of services appearing in any newspaper, telephone directory, other printed advertising medium, or electronic media.

Section 10. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 33.2814, 33.2815, 33.2816, 33.2817 and 33.2818.

Section 11. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.2819 to 33.2812, to read as follows:

SEC. 33.2812 Patrons Obligations

It is unlawful for any individual who is a patron of an *outcall nude entertainment business* to place or cause to be placed false information in the daily register.

Section 12. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.2813 and 33.2814, to read as follows:

SEC. 33.2813 Outcall Nude Entertainer Operating Requirements

(a) While *nude*, an *outcall nude entertainer* shall not be within six feet of a patron. This subsection is regulatory only.

(b) An *outcall nude entertainer* shall not intentionally touch any patron during any performance, or allow any patron to intentionally touch the *outcall nude entertainer* whether *nude* or not. This subsection is regulatory only.

(c) When acting as an *outcall nude entertainer*, it is unlawful for any person to provide *massage* services as defined in Division 35 of this Article. If the *outcall nude entertainer* also holds a *police permit* pursuant to Division 35 or 44, he or she may not provide *massage* services to a patron immediately before or after providing *outcall nude entertainment* services.

SEC. 33.2814 Outcall Nude Entertainment Businesses - Grandfather Clause

Any person holding a valid *escort business permit* or *escort permit*, and a current business tax certificate on _____, is deemed to have complied with Section 33.2804 until the *police permit* expires. The *permittee* must comply with all other Sections of this Division.

Section 13. That Chapter III, Article 3, Division 28, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 33.2820, 33.2821 and 33.2822.

Section 14. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

Section 15. The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank space in Municipal Code section 33.2814.

Section 16. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By _____
Mary T. Nuesca
Deputy City Attorney

MTN:pev:smf:jrp:jrl
07/03/00
Or.Dept:Police
O-2001-10